

161—3.17(216) Arbitration.

3.17(1) Arbitration shall be available once a case has been preliminarily screened in for investigation pursuant to the procedures set forth in 3.12(216). Arbitration is available only to those parties represented by counsel. Arbitration shall remain available with respect to any allegation of discrimination or retaliation set forth in a complaint at any point prior to issuance of the notice of hearing or a final action of the commission with respect to the complaint as set forth in 161—subrule 2.1(10). The arbitration shall encompass all issues in the case which could have been investigated by the commission as issues in the complaint including any claims for unlawful retaliation that may exist through the date of the Notice of Arbitration.

3.17(2) Once cases have been preliminarily screened in for investigation, the respective complainants and respondents shall be notified that they may, by mutual agreement, submit the case to arbitration in lieu of the investigation-conciliation-public hearing process set forth by the Iowa civil rights Act.

3.17(3) In the event either party indicates an interest in arbitration to the commission, the other party shall be so notified. A copy of the commission's rules on arbitration shall be provided to both parties.

3.17(4) If the parties agree to arbitrate, they shall so notify the commission through submission of an agreement to arbitrate which shall be styled a Notice of Arbitration. A valid Notice of Arbitration must include provisions implementing the requirements set forth in subsections 3.17(4) "a" to "l." Any Notice of Arbitration determined by the executive director or the director's designee to not meet these requirements is invalid unless the executive director or designee approves the variance. In that case, the parties shall be notified that the Notice of Arbitration is invalid and that the commission shall not close the case as a satisfactory adjustment unless the Notice of Arbitration is amended by the parties. A Notice of Arbitration shall be deemed valid unless the executive director or designee informs the parties by certified letter, mailed within 20 days after the commission's receipt of the Notice, that the Notice is invalid. If an agreement is deemed valid, the commission shall close with prejudice the case to which the agreement relates as satisfactorily adjusted. The requirements for a valid Notice of Arbitration are:

a. The complainant must agree that, in exchange for the respondent's agreement to arbitrate the case, the commission may close the case as a satisfactory adjustment with respect to those allegations being submitted to arbitration. The parties must agree that this closure in no way affects the arbitrator's authority to find liability or to award appropriate remedies. The parties must also agree that, if litigation in any forum is pending with respect to the issues submitted, the litigation shall be dismissed with prejudice when the agreement is executed. If complaints are pending with other antidiscrimination agencies concerning the issues submitted to arbitration, the complainant shall seek the closure of those complaints with respect to those issues as being satisfactorily adjusted. An agreement may provide that unless the antidiscrimination agencies make the closures as requested by the complainant, the arbitration agreement is void.

b. The agreement must state all of the liability, remedial, and other issues to be determined by the arbitrator or arbitration panel.

c. The agreement must either set forth the names of the arbitrator(s) selected by the parties or set forth a method of selection of the arbitrator or arbitration panel. The case shall be heard by only one arbitrator unless both parties agree to having it heard by a panel of three. The agreement shall acknowledge that, if all other methods of selection provided in the contract fail or cannot be followed, the district court may, by application of any one of the parties, be asked to appoint one or more arbitrators pursuant to Iowa Code section 679A.3. Unless the parties agree otherwise, they shall provide the district court with the commission's list of pro bono arbitrators as a possible, but not exclusive, source of arbitrators.

d. All parties must agree that copies of all written communications to the arbitrator concerning the facts or law of the case shall be simultaneously sent to the other parties. Such writings shall specifically indicate that copies were sent to the other parties. All verbal communications to the arbitrator(s) concerning the facts or law of the case shall be made only in the presence of the other parties. In the event the arbitrator(s) receive(s) any verbal or written ex parte communication from a party concerning the law or facts of the case, the arbitrator shall notify the other parties in writing completely describing

any oral communication and including with the notification a copy of any written communication. The opposing party shall have the opportunity to respond.

e. In the event one of the parties believes that there are grounds for disqualification of an arbitrator, the arbitrator shall consider and rule on any motion for such disqualification. The arbitrator cannot serve when the arbitrator has any personal or financial interest in the result. The arbitrator shall disclose any and all circumstances which, under Iowa law, would constitute a bias or interest which would disqualify the arbitrator. If an arbitrator is disqualified, a new one shall be selected using any of the methods of selection set forth in the agreement to choose the original arbitrator. An arbitrator's failure to exercise self-disqualification when required by Iowa law may constitute grounds for vacation of the award under Iowa Code subsection 679A.12(1) "b."

f. The arbitrator(s) shall make all decisions on procedure, liability, and remedies based on the arbitration agreement and the law of Iowa. Iowa Code chapters 216 and 679A, the reported decisions of the Iowa Supreme Court and reported decisions of the Iowa Court of Appeals, and the commission's administrative rules on substantive law are controlling authority with respect to any disputes resolved through this arbitration process. Decisions of the Iowa civil rights commission, decisions of the federal courts, and of other states, legal treatises, and other legal authorities, may be considered as persuasive authority.

g. The discovery procedures set forth in Iowa Code section 679A.7 are available to the parties. Discovery disputes are resolved by the arbitrator. Arbitrators may issue subpoenas and permit depositions as provided by Iowa Code section 679A.7.

h. The time and place for the arbitration hearing, and any motions for continuance, shall be determined by the arbitrator(s) as set forth in Iowa Code section 679A.5. The arbitration hearing is not open to the public.

i. The parties shall agree that costs for a court reporter shall be borne by the party requesting the reporter or by both equally if both parties desire a reporter. However, transcript costs are borne by the individual party requesting transcripts. When the arbitrator is serving pro bono, the parties shall split the reimbursement of the arbitrator's travel and meal expenses.

j. The parties shall agree that the arbitrator(s) shall issue their award within a specific time period which may be greater than but which shall not be less than 60 days after the hearing. The parties may agree that the arbitrator is not required to set forth findings of fact and conclusions of law and that the award shall consist solely of findings of ultimate fact as to liability and an order either denying relief or specifying the relief to be granted.

k. The parties shall agree to the exclusive jurisdiction of the arbitrator or arbitration panel to resolve the issues submitted. The decision of the arbitrator or panel is final and binding with no right of rehearing or appeal to any other forum or court of competent jurisdiction other than that provided in Iowa Code chapter 679A. The parties shall agree that for the purposes of determining the grounds for vacating an award, the arbitration proceedings shall be treated as if they had been conducted under the auspices of the American Arbitration Association.

l. The parties shall agree that the arbitration agreement is a binding contract which is enforceable in court. The parties may agree that in the event a court determines that the agreement has been violated, the court shall award a reasonable attorney's fee to the party enforcing the contract for the services rendered by that party's attorney for enforcement of the contract.

3.17(5) As an option, the parties may, but are not required to, separately stipulate that, in the event the arbitrator finds liability, the complainant shall receive an amount not less than the respondent's last offer prior to signing the arbitration agreement nor more than the complainant's last offer. These amounts shall be stated in a separate contract. Therefore, if an award is made for an amount less than the minimum listed, the parties agree that complainant shall receive the minimum. In the event an award is made for an amount over the maximum listed, the parties agree that the complainant shall receive only the maximum stated. This agreement shall not be revealed to the arbitrator without the mutual consent of the parties.

3.17(6) Unless a Notice of Arbitration is determined to be invalid pursuant to 3.17(4), the commission shall close the case as a "satisfactory adjustment," with respect to all issues submitted to

arbitration, after its receipt of the Notice. The submission to arbitration divests the commission of further jurisdiction over the matters submitted.